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No. 508

Supreme Court of the United States

(October Term, 1948)

George Marsh,
Petitioner,

VERSUS

Ned Sockey,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF

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January, 1949.

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No. ———

Supreme Court of the United States

(October Term, 1948)

George Marris,
Petitioner,

VERSUS

Ned Sockey,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS

May It Please the Court:

The petitioner, George Marris, respectfully shows to this Court:

A.

Summary Statement of the Matter Involved

Forgy Marris and George Marris, full-blood Mississippi-Choctaw Indians, married in the State of Mississippi prior to 1900 (Stipulation 25, Tr. 29), and moved to the Indian Territory in 1903 (Tr. 48, Finding 12).

Forgy Marris and George Marris lived together as husband and wife in the Chickasaw Nation some five or six

months after they arrived in the Indian Territory (Tr. 48, Finding 12), and then separated.

Forgy Marris selected 110 acres of land in Garvin County, Oklahoma, and died on the 4th of May, 1933 (Tr. 47, Finding 8).

George Marris asserts title to the land as the surviving husband of Forgy Marris and the respondent, Ned Sockey, asserts title to the land as the nephew of Forgy Marris.

After George Marris and Forgy Marris separated, Forgy Marris married twice and thereafter was divorced in the courts of the State of Oklahoma.

George Marris married in 1912, and is still living with his wife.

The asserted rights of the parties arise under the treaties between the Chickasaws and Choctaws and the United States and the Acts of Congress.

The record here shows that George Marris and Forgy Marris were never divorced by any decree of any court of competent jurisdiction (Tr. 47). The court below found, however, that George Marris and Forgy Marris were divorced by a custom then in existence in the Chickasaw Nation.

The constitution and statutes of the Chickasaw Nation were offered in evidence (Tr. 94-97, inclusive), which prohibit a divorce by custom.

The trial court and the Tenth Circuit Court of Appeals held that George Marris and Forgy Marris were amenable to the Chickasaw laws and customs.

It was the petitioner's contention in the trial court (Tr. 22), as well as in the Tenth Circuit Court of Appeals, that George Marris and Forgy Marris, being Mississippi-Choctaw Indians, were not amenable to the Chickasaw laws or their customs but were bound by the laws of Arkansas theretofore extended over the Indian Territory by the Act of Congress of May 2, 1890, 26 Stat. 81, which placed in force in the Indian Territory, Chapter 52 of Mansfield's Digest of the Statutes of Arkansas.

It was the contention of the petitioner in the trial court as well as in the Tenth Circuit Court of Appeals, that the Mississippi-Choctaw Indians who came to the Indian Territory were not members of the Chickasaw or Choctaw Indians, and did not become members of such tribes until they had been identified as Mississippi-Choctaws, moved to the Indian Territory, and made proof of continuous settlement; that it was a condition precedent for them to become such members to comply with all the terms and conditions of the treaties between the Chickasaws and Choctaws and the United States and the Acts of Congress, and that their status in the Indian Territory was the same as any other resident of the Indian Territory who were not members of the Tribes.

The trial court and the Tenth Circuit Court of Appeals also held that there existed in the Chickasaw Nation, a custom among the Chickasaw Indians (where George and Forgy Marris lived), by which a husband and wife could be divorced by mutual separation and living apart.

It was the petitioner's contention that under the laws of the Chickasaw Nation, a custom divorce was prohibited.

It was further held by the trial court and the Tenth Circuit Court of Appeals that the fact that George Marris testified that he had not obtained a divorce in any court from Forgy Marris, and that no summons, notice or process of any kind was served upon him by Forgy Marris seeking a divorce in any court, was not sufficient to overcome the presumption of prior divorce.

It was the contention of your petitioner that under the decisions of the Supreme Court of Oklahoma and the courts of other states, that this testimony was sufficient to overcome the presumption of a prior divorce.

The trial court held and the Tenth Circuit Court of Appeals also held that the fact that George Marris had remarried, raised a presumption of divorce so strong that his own testimony to the contrary was not sufficient to overcome such presumption.

It was the contention of your petitioner that this was contrary to and in conflict with the prior decisions of the Circuit Court of Appeals in the case of *United States* v. *McCarty*, 144 Fed. (2d) 341, as well as in conflict with the settled law of the Supreme Court of the State of Oklahoma.

B.

Reasons Relied on for Allowance of the Writ

1. The Circuit Court of Appeals for the Tenth Circuit held that George Marris and Forgy Marris as Missis-

sippi-Choctaw Indians, residing in the Chickasaw Nation at the time of the separation in 1903 (Tr. 48), were bound by the Chickasaw laws on divorce; that a custom of divorce existed among the Chickasaws of mutual separation and living apart which constituted a divorce and your petitioner says that this was error.

a. George Marris and Forgy Marris, being Mississippi-Choctaws, were bound by the laws of the State of Arkansas in force in the Indian Territory as provided for by the Act of Congress of May 2, 1890, 26 Stat. 81, which placed in force Chapter 52 of Mansfield's Digest of the Statutes of Arkansas, and the court erred in failing and refusing to hold that said statutes of Arkansas on divorce were not applicable to George Marris and Forgy Marris. In this connection, your petitioner asserts that under the treaties between the Choctaws and Chickasaws and the United States and the Acts of Congress, the Mississippi-Choctaw Indians were not amenable to the laws of the Chickasaw Nation where they resided until they had been identified as Mississippi-Choctaw Indians and after they had removed from the State of Mississippi to the Indian Territory and had made their final proof of residence of three years and then and only then would they be amenable to the laws of the Chickasaw Nation, but would be bound by the laws theretofore put in force in the Indian Territory which was Chapter 52 of Mansfield's Digest of the Statutes of Arkansas.

2. The Tenth Circuit Court of Appeals held that Section 4 of the Chickasaw laws, which reads as follows:

> "Divorce from the bonds of matrimony shall not be granted but in cases provided for by law, by suits in the District Court of this Nation."

did not prohibit Mississippi-Choctaw Indians, living in the Chickasaw Nation, from obtaining a divorce in accordance with the Chickasaw tribal customs. This construction is in direct conflict with the general rule of law of construing similar statutes and particularly is in conflict with the decisions of the Supreme Court of the State of Oklahoma, and in this the Tenth Circuit Court of Appeals erred.

3. The Tenth Circuit Court of Appeals held that although George Marris testified that he had not filed any suit for divorce against Forgy Marris and that no process, summons or notice was ever served on him for a divorce by Forgy Marris against him, that this was not sufficient to overcome the presumption of a divorce by his subsequent marriage and in this your petitioner says the Tenth Circuit Court of Appeals erred.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court direct to the Tenth Circuit Court of Appeals, Denver, Colorado, commanding that court to certify and to send to this Court, for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, numbered and styled on its docket, No. 3655, *George Marris, Appellant*, v. *Ned Sockey, Appellee*, and that the said decree and judgment of the Tenth Circuit Court of Appeals may be reversed by this Honorable Court

and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem mete and just and your petitioner will ever pray.

GEORGE MARRIS, Petitioner.
By H. A. LEDBETTER,
GUY H. SIGLER,

Counsel for Petitioner.

P. M. JACKSON,
Of Counsel for Petitioner.

No. ———

Supreme Court of the United States

(October Term 1948)

George Marris,
Petitioner,

VERSUS

Ned Sockey,
Respondent.

BRIEF ON BEHALF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioner, George Marris, respectfully requests that a writ of *certiorari* issue in his behalf to review the judgment of the Tenth Circuit Court of Appeals in that certain cause styled *George Marris, Appellant,* v. *Ned Sockey, Appellee,* No. 3655, in the Tenth Circuit Court of Appeals.

The judgment of the Circuit Court was entered on November 15, 1948.

I.

Opinion Below

The opinion of the Tenth Circuit Court of Appeals is set out in said transcript aforesaid and is copied at length at page 103 of said transcript. Said opinion has not been officially reported.

II.

Jurisdiction

1. The date of the judgment and opinion of the Tenth Circuit Court of Appeals to be reviewed is the 15th of November, 1948 (Tr. 110 and 103 of this Court).

2. Your petitioner says that there was presented to the trial court as well as the Tenth Circuit Court of Appeals (Tr. 22), the question of whether or not the laws of Arkansas theretofore placed in force in the Indian Territory were binding upon your petitioner and the respondent from the time they came to the Indian Territory in January, 1903, and until they separated in May, 1903, and the position of your petitioner was rejected as shown in the opinion of the court (Tr. 103).

3. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended in 28 USCA 347, an Act of February 13, 1925, 43 Stat. 9365, Sec. 240A, May 12, 1939.

The petition for writ of *certiorari* is filed within three months after the entering of the judgment and opinion of the Tenth Circuit Court of Appeals, November 15, 1948.

The request for writ of *certiorari* is requested pursuant to Section 5B of Rule 38 of this Court and particularly that portion of said rule which permits the granting of a writ of *certiorari* where a Circuit Court of Appeals has rendered a decision in conflict with a decision of other Circuit Courts of Appeal and has decided an important question of law in conflict with fundamental principles of law which should

be settled by the decisions of this Court and also that portion thereof which authorizes this Court to assume jurisdiction where a lower court misconstrued treaties between the United States and the Chickasaws and Choctaws, as well as the Acts of Congress of the United States pertaining to the Chickasaw and Choctaw Indians and particularly that portion thereof which authorizes this Court to assume jurisdiction where the lower court has decided Federal questions in a way probably in conflict with applicable decisions of this Court and particularly that portion thereof where the lower court failed to give full faith and credit to local decisions of the Supreme Court of the State of Oklahoma.

4. Cases believed to sustain the jurisdiction of this Court, are as follows: *U. Sherman Joines, Petitioner,* v. *William M. Patterson,* 274 U. S. 544 (71 L. Ed. 1194); *C. J. Longest* v. *W. C. Langford,* 274 U. S. 499 (71 L. Ed. 1170); *C. J. Longest* v. *W. C. Langford,* 276 U. S. 69 (72 L. Ed. 471); *Winton* v. *Amos,* 255 U. S. 373 (65 L. Ed. 684).

III.

Statement of Case

A full statement of this case has been given under heading "A" in the petition for writ of *certiorari* and in the interest of brevity, the statement is not to be repeated at this point.

We would like, however, for the Court to understand that it is your petitioner's contention that the Mississippi-Choctaw Indians, living in the State of Mississippi and who

remained there, under Article 14 of the Treaty of September 27, 1830 (See appendix to brief, p. i), were not tribal Indians and did not belong to any band or organization, nor did they have laws of their own, but were subject to the laws of the State of Mississippi. When a Mississippi-Choctaw moved to the Indian Territory, before he could become a member of the Choctaw Tribe of Indians, he first had to be identified in Mississippi within a given time and had to move to the Indian Territory within a designated time and had to select his land within a designated time and had to make proof of his continuous residence of three years upon the land and then and only then would be become a member of the tribe.

The failure of the Mississippi-Choctaw to comply with the conditions under which he could become a member of the tribe, the lands theretofore selected would escheat back to the tribe and be sold and the proceeds go to the members of the Chickasaw and Choctaw Tribes. In other words, until those conditions were complied with, he only had a right to become a member of the Choctaw Tribe, but, when completed, he became a member.

Final proof of settlement by the petitioner and respondent was not made until the 30th of September, 1907 (Tr. 99).

IV.

Specification of Errors

1. The Tenth Circuit Court of Appeals erred in holding that Chapter 52 of Mansfield's Digest of the Statutes of

Arkansas (See appendix to brief, page i-ii), as extended over the Indian Territory by the Act of May 2, 1890, 26 Stat. 81, Section 31, was not binding upon George Marris and Forgy Marris in 1903.

2. The Tenth Circuit Court of Appeals erred in finding and holding that the Mississippi-Choctaw Indians who came to the Indian Territory in 1903, were amenable to the Chickasaw laws prior to proof of bona fide residence in the Indian Territory for three years.

3. The Tenth Circuit Court of Appeals erred in holding that Section 4 of the Chickasaw laws on divorce (Tr. 94), was directory and not mandatory.

4. The Tenth Circuit Court of Appeals erred in holding that your petitioner had not overcome the presumption of a prior divorce between himself and the respondent, Forgy Marris.

V.

Argument

1. For brevity's sake, we will present Specification of Errors, Nos. 1 and 2 together, which are as follows:

"1. The Tenth Circuit Court of Appeals erred in holding that Chapter 52 of Mansfield's Digest of the Statutes of Arkansas (See appendix to brief), as extended over the Indian Territory by the Act of May 2, 1890, 26th Stat. 81, Section 31, was not binding upon George Marris and Forgy Marris in 1903, which section of said Act reads as follows:

" 'Sec. 31. That certain general laws of the State of Arkansas in force at the close of the session of the general assembly of that State of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory, until Congress shall otherwise provide, that is to say, the provisions of said general statutes of Arkansas relating to * * * To divorce, chapter fifty-two, and said court in the Indian Territory shall exercise the powers of the circuit courts of Arkansas under this chapter; * * * .'

"2. The Tenth Circuit Court of Appeals erred in finding and holding that the Mississippi-Choctaw Indians who came to the Indian Territory in 1903, were amenable to the Chickasaw laws prior to proof of bona fide residence in the Indian Territory for three years."

We call to the Court's attention Mills Indian Land Laws, Second Edition, Sections 52, 64, 483, 689, 690, 692, and 840 (See appendix to brief, pages ii-vi), which deal with the rights and privileges of the Mississippi-Choctaw Indian.

We call to the Court's attention, Indian Land Laws by Bledsoe, Second Edition, Section 78 and Sections 561 to 564, inclusive (See appendix to brief, pages vi-x).

Under the above referred to treaties and Acts of Congress, the Mississippi-Choctaw Indians living in Mississippi, had a right to become a member of the Choctaw Tribe of

Indians only under the conditions prescribed by the treaties and Acts of Congress, but until he had complied with said treaties and Acts of Congress by first being identified in Mississippi as a Mississippi-Choctaw Indian, and thereafter removing to the Indian Territory within the time designated and being enrolled and then making his selection within the designated time and then making proof of his continuous settlement for three years in the Indian Territory, he was not a member of the Choctaw Tribe of Indians but was what may be termed a Mississippi-Choctaw Indian entitled to citizenship when he shall have complied with the treaties and Acts of Congress.

See *Akard* v. *Minter,* 69 S. W. 852, where the Court of Appeals of the Indian Territory, in construing the rights of a Mississippi-Choctaw Indian who had not complied with these conditions, said that he was just like a foreigner coming into the Indian Territory.

See also, *Winton* v. *Amos,* 255 U. S. 373 (65 L. Ed. 684), where this Court said that the Mississippi-Choctaws who claimed a right to citizenship under Article 14 of the Treaty of 1830, were called 14th Amendment claimants and this Court also said that these 14th Amendment claimants who remained in Mississippi under that Article, adopted the dress, habits and customs and manner of living of the white citizens of the state and that they had no tribe or band, organization or laws of their own but were subject to the laws of the state.

Now when these 14th Amendment claimants came to the Indian Territory they were not members of any of the

tribes but were 14th Amendment claimants and until they complied with the treaties and Acts of Congress, they were not amenable to the Indian laws of the Indian Nation in which they settled but were amenable to the laws of Arkansas, theretofore extended over the Indian Territory.

See, *In Re: We-Gin Up's Estate,* 192 Pac. 267; *Wells* v. *Thompson,* 13th Ala. 793 (48 Amer. Dec. 76); *Eastern Band of Cherokee Indians* v. *U. S.,* 117 U. S. 312 (29 L. Ed. 890); *Davis* v. *Davis,* 305 U. S. 32; *Cheever* v. *Wilson,* 76 U. S. 108; *Moore* v. *Nah-Con-Be et al.,* 72 Kan. 169 (83 Pac. 400), Vol. 27 Am. Jur. 573.

Article 14 of the Treaty of 1830 reads as follows:

> "Persons who claim under this Article shall not lose the privilege of a Choctaw citizen *but if they ever remove are not to be entitled to any portion of the Choctaw annuity.*"

The Congress of the United States by subsequent legislation, had a right to say under what conditions the Mississippi-Choctaw could become a citizen of the Choctaw tribe [see *Winton* v. *Amos,* 255 U. S. 373 (65 L. Ed. 684); *Lone Wolf* v. *Hitchcock,* 187 U. S. 553; *Marchi Tiger* v. *Western Investment Company,* 221 U. S. 286; *Brader* v. *James,* 246 U. S. 88 (62 L. Ed. 591)], and until the Mississippi-Choctaw Indian complied with these conditions, such Indian was not a member of the Choctaw Tribe of Indians.

2. Argument in support of Specification of Error No. 3, which is as follows:

"The Tenth Circuit Court of Appeals erred in holding that Section 4 of the Chickasaw laws on divorce (Tr. 94), was directory and not mandatory."

Without waiving our contention that George Marris and Forgy Marris, being Mississippi-Choctaw Indians, were not amenable to the laws and customs of the Chickasaw Nation, we contend even if the Court should hold that they were amenable to the Chickasaw laws, that Section 4 of the Chickasaw constitution on divorce (Tr. 94), was mandatory and exclusive and that divorce by custom, if ever recognized in the Chickasaw Nation, was prohibited by said Section 4 of the Chickasaw Constitution, which is as follows, to-wit:

"Divorce from the bonds of matrimony shall not be granted, but in cases provided for by law, by suits in the District Court of this Nation."

Note: For statutes and constitution of the Chickasaws (See Tr. 94).

If the above provision of the Chickasaw laws is mandatory, then no divorce could be recognized except a divorce in the District Court of the Chickasaw Nation. It is our contention that the above statute is mandatory and that the act upon its face reflects that it was the intention of the Legislature to make the same mandatory and exclusive.

No doubt it was the purpose of the Legislature to make a divorce a matter of public record in order to make secure marital relations and for the public benefit and for the security of public rights.

A statutory provision is generally regarded as mandatory where the power or duty to which it relates is for the public benefit, good, interest or protection and for the security of public rights or for the advancement of public justice. See 50 Am. Jur., page 54, para. 34.

It will be noted that the above statute is negative in form and provides that a divorce shall not be granted except in a particular manner and it is the general rule that a statute which is negative or prohibitory or exclusive is mandatory and not directory. See 59 C. J. 1075, para. 32. Section 2 of the Act to prohibit polygamy, of the Chickasaw Laws (Tr. 94), is as follows:

> "Be it further enacted, that polygamy shall consist in being married, by any Judge of this Nation or other person lawfully authorized to perform the marriage ceremony, to two or more men or women as the case may be, the first husband or wife being still alive and undivorced by the District Court of this Nation, and all such marriages shall be void from the beginning, just the same as if they had never been solemnized; and no rights of citizenship what ever shall be acquired by such unlawful marriages."

Attention is called to the fact that polygamy is defined as being married to two or more men or women as the case may be, and the first husband or wife being still alive and undivorced by the District Court of this Nation. This act construed with Section 4 of the General Laws, clearly demonstrates that it was the policy of the Chickasaw Nation to require a divorce in a court of record.

If the above statute is mandatory and exclusive, then divorces in accord with the tribal customs were superseded. See *Barnett* v. *Prairie Oil & Gas Company*, 19 Fed. (2d) 504.

3. Argument in support of Specification of Error No. 4, which is as follows:

> "The Tenth Circuit Court of Appeals erred in holding that your petitioner had not overcome the presumption of a prior divorce between himself and the respondent, Forgy Marris."

The Circuit Court of Appeals for the Tenth Circuit held that the fact that George Marris had married subsequent to his separation from Forgy Marris, raised a presumption that he had been divorced from Forgy and held further that the testimony that George Marris (Tr. 51, para. 17), to the effect that he had not sued for divorce nor had been sued or served with any notice, summons or process by Forgy Marris, seeking a divorce and that he and Forgy were at all times residents of the Chickasaw Nation and the State of Oklahoma, was not sufficient to overcome the presumption of a prior divorce from Forgy. This is in direct conflict with the settled decisions of the Supreme Court of the State of Oklahoma in which decisions it is held that the presumption of a prior divorce is overcome by the testimony of one of the parties that no divorce was obtained by him and that no process or notice of a divorce was ever served upon him by the other party to said marriage. See *Madison* v. *Steckleberg*, 101 Okla. 237 (224 Pac. 261); *Brokeshoulder* v. *Broke-*

shoulder, 84 Okla. 249 (204 Pac. 284); *Page* v. *Roddie*, 92 Okla. 236 (218 Pac. 1092); and *Puntka* v. *Puntka*, 174 Okla. 517 (50 Pac. (2d) 1092).

We also assert further that when Ned Sockey offered in evidence, what purported to be an affidavit of George Marris in which George Marris stated that he and Forgy Marris had been married and were never divorced by any court proceedings, this statement would be binding upon the party offering the same (Tr. 95). See *Richardson* v. *Southwestern Cotton Seed Company*, 81 Pac. 781.

We further assert that the decision of the court on the above proposition is in direct conflict with the decision of the *United States of America* v. *McCarty*, 144 Fed. (2d) 341, Tenth Circuit Court of Appeals, wherein this Court held that if one of the parties to the marriage, remarried, this would not estop him from asserting his rights under the first marriage. The court in this case did not in so many words hold that George was estopped by his second marriage, but that the second marriage raised a presumption that was not overcome by his own undisputed testimony, is tantamount to holding that he was estopped by his subsequent marriage to assert any rights under the first marriage and we say that this is in direct conflict with the holding of the Tenth Circuit Court of Appeals in the case referred to above.

CONCLUSION

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the rights of your petitioner might

be preserved and that he be awarded the lands allotted to his deceased wife and judgment so rendered and that to such an end a writ of *certiorari* should be granted and this Court should review the decision of the Circuit Court of Appeals for the Tenth Circuit and finally reverse it.

H. A. LEDBETTER, and
GUY H. SIGLER,

Counsel for Petitioner.

P. M. JACKSON,
Of Counsel for Petitioner.

January, 1949.

APPENDIX

Article 14 of the Treaty of September 27, 1830:

"Persons who claim under this Article shall not lose the privilege of a Choctaw Indian but if they ever remove are not to be entitled to any portion of the Choctaw annunity."

Chapter 52 of Mansfield's Digest of the Statutes of Arkansas:

"Section 2556. The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

"First: Where either party, at the time of the contract, was and still is impotent.

"Second. Where either party willfully deserts and absents himself or herself from the other for the space of one year without reasonable cause.

"Third. Where he or she had a former wife or husband living at the time of the marriage sought to be set aside.

"Fourth. Where either party shall be convicted of felony or other infamous crime.

"Fifth. Where either party shall be addicted to habitual drunkenness for the space of one year (a), or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other as shall render his or her condition intolerable (b).

"Sixth. Where either party shall have committed adultery subsequent to such marriage.

"Seventh. Where either party shall, subsequent to such marriage, have become permanently or incurably insane. Civil Code, sec. 464, as amended, 1873.

"Sec. 2557. The injured party may apply for such decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in such case. Rev. Stat. 51, Sec. 2.

"Section 2558. The proceedings shall be in the county where the complaintant resides, and the process may be directed in the first instance to any county in the state where the defendant may then reside. Ib., Sec. 5. * * * "

Mills Indian Land Laws, Second Edition, Sections as follows:

"52. Mississippi-Choctaws—Under Article 15 of the Treaty between the United States and the Choctaw Nation, concluded September 27, 1830, provision was made for those Choctaw Indians who desired to remain in the States where they formerly lived, and to become citizens of those States.

"By said Article it is provided:

" 'Persons who claim under this Article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.'

"Section 21 of the Curtis Act provided that the Commission should have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the above treaty.

"By section 1 of the Indian Appropriation Act of May 31, 1900, it was enacted:

" 'Provided, that any Mississippi-Choctaw, duly identified as such by the United States Commission to the Five Civilized Tribes, shall have the right at any time prior

to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior to make settlement within the Choctaw-Chickasaw country and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior, as Choctaws entitled to allotment.'

"By sections 41, 42, 43 and 44 of the Supplemental Agreement the right of the Mississippi-Choctaws to participate in the allotment of the lands of the Choctaw and Chickasaw Nations was fully recognized, and provision was made for such Mississippi-Choctaws as should remove to the Choctaw-Chickasaw country within a limited time. Mississippi-Choctaws who complied with the above provisions are members of the tribe, for all purposes and received allotments as such."

"Section 64. Mississippi-Choctaws—The allotments of Mississippi-Choctaws were subject to a condition subsequent that did not apply to the other members of freedmen of the tribes. This condition was continuous residence upon the lands of the Choctaws and Chickasaws for a period of three years, including his residence thereon before and after enrollment or until the time of his death, if it occurred prior to the expiration of that time. Upon proof of such continuous residence to the satisfaction of the Indian Department, he was entitled to a patent.

"Section 42 of the Supplemental Agreement provided:

" 'When any such Mississippi-Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka

Agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations.' "

"Section 483. Mississippi-Choctaws.—That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi-Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities."

"Section 689. Enrollment of Mississippi-Choctaws.—41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi-Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi-Choctaws shall be enrolled by such Commission as Mississippi-Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi-Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi-Choctaw Indians and the descendants of any Mississippi-Choctaw Indians whether of full or mixed blood who receive a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty

who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi-Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operated to the advantage of any application who is not a Mississippi-Choctaw of the full blood or who is not the descendant of a Mississippi-Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi-Choctaws so enrolled by said Commission shall be upon a separate roll.

"Section 690. Continuous Bona Fide Residence.—42. When any such Missisippi-Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw nations."

"Section 692. Failure to Make Proof of Residence.—44. If within four years after such enrollment any such Mississippi-Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi-Choctaw, in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest

in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser."

"Section 840.—Mississippi-Choctaws May Make Proof of Settlement at Any Time Prior to Approval of Final Rolls. —Provided. That any Mississippi-Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: Provided further, That all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi-Choctaws shall be null and void."

Indian Land Laws by Bledsoe, Second Edition, Sections as follows:

"Section 78. Mississippi Choctaws.—Under the Choctaw-Chickasaw Supplemental Agreement all persons identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws were permitted, at any time within six months after the date of identification by the Commission, to make bonafide settlement in the Choctaw-Chickasaw country, and upon proof of such settlement to the Commission within one year after identification to be enrolled as Mississippi Choctaws entitled to allotment as provided for citizens and members of said tribe.

"The Mississippi Choctaws were required to be, and were, enrolled upon separate rolls. Under section 42 of said supplemental agreement when such Mississippi Choctaw had resided for a period of three years in the Choctaw or Chickasaw Nation he became entitled, upon proof of such residence, to receive a patent for his allotment as provided in the Atoka Agreement. The land so allotted to a Mississippi Choctaw was required to be held by him as provided in said agreement for members of the Chickasaw and Choctaw Tribes respectively.

"Failure to make proof within four years after enrollment by the allottee or his heirs terminated his interest in the land selected in allotment, in which event the lands were to be sold by the Secretary of the Interior for not less than the appraised value and the proceeds turned in to the Choctaw and Chickasaw Tribes.

"By the Act of Congress approved May 31, 1900 (31 Stat. 236, c. 598), before provisions had been made for admitting the Mississippi Choctaws as allottees of the Choctaw and Chickasaw Tribes, there was inserted in the Indian Appropriation Bill a provision declaring all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to Mississippi Choctaws to be void. This legislation was brought about by reason of the fact that many contracts had been made with members of these tribes in Mississippi for the purchase of their lands as soon as allotted.

"The certificates issued by the Commission to the Five Civilized Tribes to Mississippi Choctaws was, in the first instance, termed a homestead designation as to the homestead selection, and an allotment designation as to the lands in excess of the homestead. Patents issued to the Mississippi Choctaws contained the recital that they had duly complied with the act with reference to residence, etc.

"Until compliance by the Mississippi Choctaws with the requirements of the statute, their interest in the allotted lands was subject to be terminated by failure so to do. After compliance with the statute the relation of the Mississippi Choctaw to his allotment is the same as that of members of the Choctaw and Chickasaw Tribes. Such allotted lands were subject to the restriction upon alienation imposed upon allottees of the Choctaw and Chickasaw Tribes by the Choctaw-Chickasaw Allotment Agreements, as well as to other provisions of said agreements. In other words, Mississippi Choctaws are, after issuance of patent, to all intents and purposes Choctaws and Chickasaws, and subject to all legislation affecting the allotted lands of said tribes as fully and completely as are the Choctaws and Chickasaws."

"Section 561. Mississippi Choctaws.—41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement and in the

disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

"Section 562. Mississippi Choctaws—Allotments upon condition—42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka Agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations."

"Section 563. Mississippi Choctaws—Enrollments of. 43. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such,

must be made personally before the Commission to the Five Civilized Tribes. Fathers may apply for their minor children, and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons and prisoners by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

"Section 564. Mississippi Choctaws—Proof of continuous residence.—44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw Tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser."